



PATENT
P56559PCT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: LOUIS LAGLER *et al.*

U.S. Serial No.: 09/890,154 Examiner : HYLTON, R. ANNETTE

U.S. Filing Date: 23 October 2001 Art Unit : 3727

I. A. No.: PCT/CH99/00510 I.A. Filing date: 30 October 1999

Priority date: 27 January 1999

For: CLOSED INJECTION MOULDED CLOSURE PROVIDING MATING UPPER AND LOWER PARTS COUPLED BY INTEGRALLY FORMED HINGE CONNECTIONS (as amended)

STATEMENT OF THE SUBSTANCE OF THE INTERVIEW

Paper No. 23

Mail Stop: AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant 37 C.R.R. §1.133, Applicants submit the following statement of the substance of the interview in response to Examiner Interview Summary Record mailed on 14 March 2005 (Paper No. 20050308).

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REMARKS

A telephone interview was held on 8 March 2005 between the Examiner and Applicants' undersigned attorney.

The interview was about the Applicants' Petitions filed on 30 December 2003 (Paper No. 12) and 27 April 2004 (Paper No. 16) requesting withdrawal of the requirements for labeling Figure 1 "Prior Art" set forth by the Examiner in the first Office actions mailed on 23 April 2003 (Paper No. 8) and second Office action mailed on 13 April 2004 (Paper No. 15), respectively.

After more than fourteen (14) months from the filing of the first Petition (Paper No. 12) (and, eleven (11) months after the filing of the second Petition (Paper No. 16)), to date, no decision on those Petitions have been issued.

The Examiner states in the Examiner Interview Summary Record mailed on 14 March 2005 (Paper No. 20050308);

"Mr. Bushnell called requesting the status of a petition filed to overcome the drawing objection. He inquired why it was taking so long and demanded the examiner have the petition acted on today. The examiner replied that could not be done, but a follow up message could be sent to the TC3700 SPRE workgroup. Mr. Bushnell stated --- that US codes 102 and 103 do not require drawings to be marked as prior art. With this, the examiner asked the attorney to discuss the matter of the petition with her supervisor" (quoting from Continuation of Substance of Interview

of Paper No. 20050308).

The telephone interview was requested pursuant to 37 C.F.R. §1.133 in that, it is Applicants' belief that no response to any Petition after more than a year from the filing of that Petition is highly unreasonable and unfairly prejudicial to the interest and rights of any Applicant and that, interferes with proper and orderly prosecution of an U.S. patent application. Applicants believe that Examiners of the U.S. Patent & Trademark Office agree on this point.

With respect to the Applicants' request set forth in the Petitions (Paper No. 12 and 16), it is noted that, the Examiner asserted that "Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated" and cited section 608.02(g) of the *Manual Patent Examining Procedure*. It is also noted that the term "Prior Art" is defined by statute, not by the *Manual Patent Examining Procedure* (MPEP). Specifically, 35 U.S.C. §103(a) and (b) define the term "Prior Art" by reference to the several paragraphs of 35 U.S.C. §102. Nothing in any paragraph of §102 however, states that subject matter "which is *old*" constitutes prior art. Consequently, the Examiner's sole rational for imposing the requirement that Figure 1 be labeled as "Prior Art" is contrary to statute and improper. The requirement must be therefore be withdrawn.

In view of the above, as mentioned during the telephone interview held on 8 March 2005, it is respectfully requested that Applicants' Petitions filed on 30 December 2003 (Paper No. 12) and 27 April 2004 (Paper No. 16) be immediately acted upon.

Respectfully submitted,



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